

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL A. BURNHART

Plaintiff,

v.

ROBERT MASKO ,

Defendant

Case No. C07-5045FDB

SECOND ORDER DIRECTING  
SERVICE BY U.S. MARSHAL

This action, brought under 42 U.S.C. 1983, has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). The plaintiff has been granted leave to proceed *in forma pauperis*. Plaintiff has provided service copies and filled out service forms. THE FIRST ATTEMPT TO SERVE DEFENDANT MASKO BY MAIL WAS NOT SUCCESSFUL. The clerk is directed to effect service as provided below.

(l) Service by United States Marshal.

It is hereby ORDERED that the United States Marshal shall send the following to defendant Masko C/O Craig Adams at 930 Tacoma Ave Tacoma Washington 98402: a copy of the complaint and of this Order, two copies of the Notice of Lawsuit and Request for Waiver of Service of Summons, a Waiver of Service of Summons, and a return envelope, postage prepaid, addressed to the Clerk's Office. All costs of service shall be advanced by the United States. The Clerk shall

ORDER - 1

1 assemble the necessary documents to effect service.

2 (2) Response Required

3 Defendant shall have **thirty (30) days** within which to return the enclosed Waiver of Service  
4 of Summons. A defendant who timely returns the signed Waiver shall have **sixty (60) days** after the  
5 date designated on the Notice of Lawsuit to file and serve an answer or a motion directed to the  
6 complaint, as permitted by Rule 12 of the Federal Rules of Civil Procedure.

7 **If defendant elects not to return the signed Waiver the Marshal's Office shall effect**  
8 **personally service. Defendant is advised that in such instances costs and other sanctions could**  
9 **be imposed, pursuant to Rule 4(d)(2) and General Local Rule 3 (d). A defendant who has**  
10 **been personally served shall file an answer or motion permitted under Rule 12 within thirty**  
11 **(30) days after service.**

12 (3) Filing and Service by Parties, Generally.

13 All original documents and papers submitted for consideration by the court in this case, are to  
14 be filed with the Clerk of this court. The originals of all such papers shall indicate in the upper right-  
15 hand corner the name of the Magistrate Judge to whom the copies are to be delivered. The papers  
16 shall be accompanied by proof that such documents have been served upon counsel for the opposing  
17 party (or upon any party acting *pro se*). The proof shall show the day and manner of service and  
18 may be written acknowledgment of service, by certificate of a member of the bar of this court, or by  
19 affidavit of the person who served the papers.

20 (4) Motions.

21 Any request for court action shall be set forth in a motion, properly filed and served. The  
22 motion shall include in its caption (immediately below the title of the motion) a designation of the  
23 Friday upon which the motion is to be noted upon the court's calendar. That date shall be the third  
24 Friday following filing of the motion (fourth Friday for Motions for Summary Judgment). All briefs  
25 and affidavits in opposition to any motion shall be filed and served not later than 4:30 p.m. on the  
26 Monday immediately preceding the Friday appointed for consideration of the motion. If a party fails  
27 to file and serve timely opposition to a motion, the court may deem any opposition to be without

merit. The party making the motion may file, not later than 4:30 p.m. on the Thursday immediately preceding the Friday designated for consideration of the motion, a response to the opposing party's briefs and affidavits.

(5) Motions for Summary Judgment

If one of the parties files a motion for summary judgment pursuant to Federal Rules of Civil Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56 requires a nonmoving party to submit affidavits or other evidence in opposition to a motion for summary judgment if the moving party has shown the absence of issues of material fact and an entitlement to judgment as a matter of law. A nonmoving party may not rest upon the mere allegations or denials of prior pleadings. Rather, successful opposition to a motion for summary judgment requires the nonmoving party to set forth, through affidavits or other evidence, specific facts showing a genuine issue for trial. Failure by the nonmoving party to oppose a summary judgment motion or to present counter evidence could result in the Court accepting the moving party's evidence as the truth, and entering final judgment in favor of the moving party without a full trial. Rand v. Rowland, 113 F.3d 1520 (9<sup>th</sup> Cir. 1997).

(6) Direct Communications with District Judge or Magistrate Judge

No direct communication is to take place with the District Judge or Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk.

(7) Clerk's Action

The Clerk is directed to send a copy of this Order and of the General Order issued by the Magistrate Judges to plaintiff and to note this matter for thirty five days after the date of this order.

DATED this 11 day of March, 2008.

/S/ J. Kelley Arnold  
J. Kelley Arnold  
United States Magistrate Judge